

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
MIDDLE DIVISION

97 AUG 27 PM 3:49  
U.S. DISTRICT COURT  
N.D. OF ALABAMA

ANDRE DANSBY,

Plaintiff,

vs.

DR. WILLIAM HAMMACK, ET AL.,

Defendants.

CV-97-PT-0205-M

Upay

**ENTERED**

AUG 27 1997

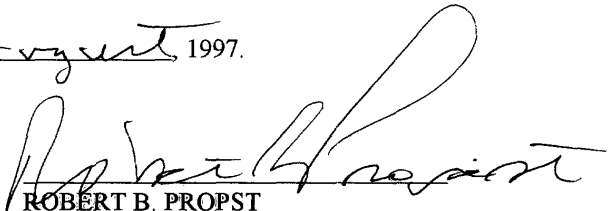
MEMORANDUM OF OPINION

The magistrate judge filed a report and recommendation on June 25, 1997, recommending that this action filed pursuant to 42 U.S.C. § 1983 be dismissed both for failure to comply with the court's April 28, 1997 Order and based on the doctrine of *res judicata* and collateral estoppel. No objections have been filed.

Having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation, the Court is of the opinion that the magistrate judge's report is due to be and is hereby ADOPTED and the recommendation is ACCEPTED. This complaint is also due to be dismissed as frivolous pursuant to 28 U.S.C. § 1915A(b)(1). In *Clark v. State of Georgia Pardons and Paroles Board, et al.*, 915 F.2d 636, 641 (11th Cir. 1990), the Eleventh Circuit Court of Appeals held that *res judicata* and collateral estoppel are affirmative defenses which justify dismissal of a claim as frivolous. Accordingly, the complaint is due to be dismissed for failure to comply with the court's April 28, 1997 Order, based on the doctrine of *res judicata* and collateral

estoppel and as frivolous. An appropriate order will be entered.

DATED this 27th day of August 1997.

  
ROBERT B. PROPST  
SENIOR UNITED STATES DISTRICT JUDGE